UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

ASSURANCE COMPANY OF AMERICA, as subrogee of INDIANAPOLIS WOOD PRODUCTS, INC., Plaintiff,	)	
vs.	)	4:04-cv-0026-SEB-WGH
HONEYWELL, INC., Defendant.	)	

ENTRY DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This matter comes before the Court on Defendant's Motion for Summary Judgment on Plaintiff Assurance Company of America's ("Assurance"), as subrogee of Indianapolis Wood Products, Inc. ("IWP"), product liability claim against Defendant Honeywell International, Inc. ("Honeywell") as a result of a fire that occurred at IWP and on Plaintiff's state law claim for negligence related to the same fire. Plaintiff contends that a Honeywell R7795A Flame Safeguard Control (the "Control") malfunctioned and caused the fire. Defendant contends that Plaintiff's only evidence supporting its claim is an expert witness whose opinion is not sufficiently reliable to pass muster under Federal Rule of Evidence 702. If the expert testimony is excluded, Plaintiff cannot, as a matter of law, establish that the Control caused the fire. The Court, being duly advised in the premises, hereby DENIES Defendant's Motion for Summary Judgment.

Factual Background

The facts concerning the fire at issue are generally not in dispute (See Section A, infra); however, the parties dispute the role the Control played as the ignitor of the fire (See Sections B,

C, and D, infra).

I. *Plaintiff's Investigation*

A.) Fire and Initial Investigation

On April 7, 2002, a fire occurred at IWP's wood processing facility located in Scottsburg, Indiana. Compl. ¶¶ 5–7. Plaintiff was the insurer of the business and property and, pursuant to its obligations under the insurance policy, paid a property damage claim of $117,370.69. Compl. ¶¶ 8–9.

On April 10, 2002, Plaintiff retained the services of Scott Jones, a Certified Fire Investigator and Professional Engineer working for Engineering and Fire Investigations ("EFI"), to investigate the IWP fire. Def.'s Br. in Supp. of Mot. for Summ. J. (hereinafter "Def.'s Motion"), p. 1; Plaintiff's Mem. of Law in Opp'n to Mot. for Summ. J. (hereinafter "Pl.'s Memo"), p. 1. Jones conducted investigations at the IWP facility on April 11, 2002, and April 22, 2002.[1] Pl.'s Memo, pp. 1–2; Jones's December 13, 2004 Engineering Report (hereinafter "Jones's Report"), p. 3. As part of his investigations, Jones examined the entire fire-damaged area; interviewed Sig Ostertag, the owner of IWP, to learn about the IWP facility and the events leading up to the fire; inventoried component parts of the boiler unit where the fire began, including the Control, which is the primary controller for the boiler unit; and examined other parts of the boiler unit, in order to rule them out as the cause of the fire. Pl.'s Memo, p. 2;

[1] While Defendant claims not to have been invited to these investigations, they were hardly private. In addition to Jones, the following individuals were present: Larry Fore of EFI; Jim McCann of Keeler Webb Associates of Indianapolis, Indiana, and Bob Phelps of GAB Robins North America, Inc., both representing Burnham Corporation; Tim Noonan of Energy Sales of Indianapolis, Indiana, representing Gordon-Piatt Corporation; Russ Zeckner of Donan Engineering, Inc. of Louisville, Kentucky, who was representing Falls City Boiler; and Bill Cornett of GAB Robins North America, Inc. representing Zurich North America. Jones's Report, p. 2.

Jones's Report, pp. 2, 5–6.

B.) Inspection and Testing of the Control

In addition to making a general inspection of the fire scene, Jones conducted several examinations of the Control and the 1K2 relay[2] contained within it. Jones's Report, at 7–9. These took place on April 22, 2002; May 1, 2002; July 31, 2002[3]; and October 18, 2004.[4] Jones's Report, at 7. During his May 1 examination of the Control, Jones analyzed the electrical layering diagram of the device and determined that two sets of 1K2 contacts were present. Pl.'s Memo, p. 2. In reviewing the diagram, Jones found that one set of the 1K2 contacts was normally in a closed (touching) position and the other set was normally in an open (non-touching) position. Id. (citing Jones's Dep., p. 120).

Based upon his April 11 and May 1, 2002, findings, Jones hypothesized concerning the origins of the fire and presented his conclusions to John Forss ("Forss"), who is Defendant's expert. Id. Jones told Forss in a March 18, 2003, letter that "the fire loss involved an uncontrolled flame roll-out in the burner intake plenum. The flame subsequently caused ignition of surrounding building and materials." Jones's Dep. p. 91, Pl.'s Ex. 2.

---

[2] While Plaintiff does not explain what a "1K2 relay" is, Defendant states that the "Control sequences the operation of the boiler through inputs received from boiler components. These input signals trigger relays [we assume this includes the 1K2 relay] energizing and deenergizing [*sic*] terminals of the Control and in turn the boiler components." Def.'s Memo, p. 2 (internal citations omitted).

[3] John Forss ("Forss"), Professional Engineer of Sigma Engineering, Inc. of Spring Park, Minnesota (and Defendant's expert witness) and Jeannine Lee, Esq. Of Flynn, Gaskins & Bennett, LLP of Minneapolis, Minnesota, were present during this inspection. Jones's Report, p. 7.

[4] Forss and David Cramer, Professional Engineer of Crane Engineering in Plymouth, Minnesota were present during this inspection. Id.

Later, on October 18, 2004, Jones, Forss, and David Cramer ("Cramer"), who is a Professional Engineer, conducted experiments on the Control device, particularly the 1K2 relay, at the Crane Engineering Laboratories in Plymouth, Minnesota. Id. at 7. Those experiments involved the collection of data using a scanning electron microscope. Id. at 8. Jones claims that both visual observations and the use of the microscope revealed that the normally closed contacts on the 1K2 relay had welded shut. Id. at 7. Jones believes the weld occurred as a result of "high resistance heating," which distorted the copper center contact arm so as to push shut the normally open contacts. Id. at pp. 8, 10.

Regarding the high resistance failure, Jones stated in his report that "[h]igh resistance contacts typically develop from an improper manufacturing condition such as contamination of the contact faces with environmental contaminates and/or irregular contact surfaces." Jones's Report, p. 15. Jones also stated in his deposition that "these contacts actually probably worked. They were manufactured in a clean condition. . . . The boiler obviously operated for a long time." Jones's Dep., p. 123. Jones did not indicate in his report, nor did Plaintiff mention in its memorandum, any other basis for its belief that the high resistance failure actually occurred.

In completing the October 18, 2004, experiments, Jones measured the resistance between the contacts and concluded that both sets of contacts allowed the passage of electrical current. Pl.'s Memo, p. 3. However, Jones also reported that "[a]lthough the normally open contacts had been pushed shut, insulative oxide layers and/or contaminates from the fire did *not* permit the free flow of current across the contacts." Jones's Report, p. 8 (emphasis added).[5]

Based upon his fire scene investigations, Control inspections, and Control experiments,

[5] This apparent contradiction is not resolved, either in Plaintiff's briefings or in Jones's Report.

Jones reached the conclusion that the simultaneous closing of the two sets of contacts allowed "1) the intermittent pilot valve to open without the blower operating and 2) the spark ignition to continuously operate." Id. at 14. Jones opines that these two conditions created an oxygen-deficient diffusion flame inside the boiler, which, when the blower was off, was able to extend "from the boiler cavity to the surroundings outside the boiler enclosure." Id. The heat generated by this "flame rollout" melted the natural gas regulator, as well as helped ignite flammable objects around the boiler air inlet. Id.

Jones did not conduct any testing to support his theory that a "high resistance" weld occurred in the Control. Def.'s Memo, p. 8. Furthermore, Jones did not provide any test results to show how the contact arm may have pushed the normally open contacts closed prior to the fire. Id.

C.) Current State of the Control

As previously mentioned, Plaintiff's contention is that the two sets of 1K2 contacts were closed prior to the start of the fire. See Section (A)(2), supra. In addition, Plaintiff maintains that the contacts have remained closed on the Control. Pl.'s Memo, p. 4. To support its argument, Plaintiff cites the Forss Deposition, conducted on March 11, 2005, wherein Forss testified that an electric current did actually pass through the circuit when tested on October 18, 2004, indicating that the contacts are closed. Forss's Dep., p. 61–62. Additionally, Jones included in his report photographs labeled to show that the normally shut contacts are welded and the normally open contacts are closed. Jones's Report, pp. 7–8.

II. *Defendant's Investigation*

A.) Initial Fire and Investigation

On July 31, 2002, and October 14, 2003, Defendant's expert, John Forss ("Forss"),

examined and tested the components of the boiler unit that were collected by Scott Jones and stored at the Engineering and Fire Investigations storage facility. Forss's January 14, 2005 Report ("Forss's Report"), p. 1. Defendant contends that Forss was not invited to the fire scene on April 11, 2002 or April 22, 2002, when Jones conducted his initial investigations. Def.'s Memo, p. 2 n.1.[6] In addition to the examination of the boiler unit components, Forss, along with Jones and Cramer, examined and tested the Control on October 18, 2004. Def.'s Memo, p. 3; Forss's Report, p. 1. Finally, Forss relied upon his "knowledge of burner controls and associated relays based on [his] engineering education and over 40 years of experience in the heating, ventilating[,] and air conditioning industry" in concluding that the Control did not in fact cause the fire at Indianapolis Wood Products. Forss's Report, p. 2.[7]

B.) Inspection and Testing of the Control

Forss participated in the October 18, 2004 testing that took place at Crane Engineering Laboratory in Plymouth, Minnesota. Def.'s Memo, p. 3 The resistance testing across the normally open 1K2 contacts revealed an open circuit. Id. That testing resulted in a resistance measurement of "approximately 20 MegOhms [*sic*] resistance." Id.; Forss's Report, p. 3. According to Forss, that level of resistance is indicative of an open (or incomplete) circuit, which would not allow the current to flow to the open pilot valve. Forss's Report, p. 3.

Additionally, Forss disputes Jones's argument that the high level of resistance measured

---

[6] As we have previously noted, while Defendant may not have been expressly invited, the gathering was not a private affair. See Section (A)(1), supra n.2.

[7] Forss's Report is a mere two pages long, which is quite brief compared to the sixteen-page report and fifty accompanying photographs submitted by Jones. Forss failed to elaborate on how he reached his conclusions reflected in his report. We, of course, must decide the issues before us based on what the parties submit.

on October 18 was the result of the deposited insulative oxide layers and/or contaminates. Forss's Report, p. 2; Jones's Report, p. 8. Forss contends that, had the contacts been pushed together prior to the fire, as Jones hypothesized, then the oxides and contaminates would not have been deposited on the normally open contacts. Forss's Report, p.3. Thus, any testing would have revealed resistance levels of near zero Ohms, i.e., a closed circuit. Forss's Report, p. 3.

C.) *Current State of the Control*

Defendant claims that the normally open contacts on the 1K2 relay of the Control are now actually open. Def.'s Memo, p. 4. Plaintiff contends that Forss stated in his deposition that an electric current did actually pass through the circuit when tested, which allegedly indicates a closed (or complete) circuit, but Defendant disagrees with that representation of Forss's testimony. See Def.'s Reply Br. in Supp. of Mot. for Summ. J. ("Def.'s Reply"), pp. 3–4. Defendant explained that a current was, indeed, measured during the October 18 testing, but under Ohm's law[8] 120 volts across 20,000,000 Ohms of resistance would result in only 0.000006 amps of current, which is likely insufficient to energize the pilot valve. Def.'s Reply, p. 2. Additionally, Defendant contends this high level of resistance is indicative of an open circuit, as a closed circuit would measure near zero Ohms of resistance across the normally open contacts. Id. Defendant argues that those facts indicate that the Control, in its present condition, i.e., an open circuit, could not have caused the fire. Id. These disagreements between Jones and Forss have culminated in the motion before the court.

[8] Ohm's law is used to measure current or resistance across an electrical circuit. Current (I) is equal to voltage (E) divided by resistance (R). In the instant case, voltage is constant at 120 volts. Def.'s Reply, p. 3 n.4.

Legal Analysis

I. *Summary Judgment Standard*

In a motion for summary judgment, the burden rests on the moving party, Defendant in this case, to demonstrate "that there is an absence of evidence to support the nonmoving party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). After the moving party demonstrates the absence of a genuine issue for trial, the responsibility shifts to the non-movant to "go beyond the pleading" and point to evidence of a genuine factual dispute precluding summary judgment. Id. at 322-23. "If the non-movant does not come forward with evidence that would reasonably permit the finder of fact to find in her favor on a material question, then the court must enter summary judgment against her." Waldridge v. American Hoechst Corp., 24 F.3d 918, 920 (7th Cir. 1994), (citing Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 585-87 (1986); Celotex, 477 U.S. at 322-24; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-52 (1986)).

Summary judgment is not a substitute for a trial on the merits, nor is it a vehicle for resolving factual disputes. Waldridge, 24 F.3d at 290. Therefore, in considering a motion for summary judgment, we draw all reasonable inferences in favor of the non-movant. Venters v. City of Delphi, 123 F.3d 956, 962 (7th Cir. 1997). If genuine doubts remain and a reasonable fact-finder could find for the party opposing the motion, summary judgment is inappropriate. See Shields Enters., Inc. v. First Chicago Corp., 975 F.2d 1290, 1294 (7th Cir. 1992); Wolf v. City of Fitchburg, 870 F.2d 1327, 1330 (7th Cir. 1989). But if it is clear that a plaintiff will be unable to satisfy the legal requirements necessary to establish his or her case, summary judgment is not only appropriate, but mandated. See Celotex, 477 U.S. at 322; Waldridge, 24 F.3d at 920. A plaintiff's self-serving statements, unsupported by specific concrete facts reflected in the

record, cannot preclude summary judgment. Albiero v. City of Kankakee, 246 F.3d 927, 933 (7th Cir. 2001); Slowiak v. Land O'Lakes, Inc., 987 F.2d 1293, 1295 (7th Cir. 1993).

II. *Defendant's Daubert/Rule 702 Challenge*

In the case at bar, Defendant proceeds along a somewhat awkward path to summary judgment. Defendant contends, and Plaintiff does not dispute, that Plaintiff's case is based solely upon the expert opinion of Scott Jones, (Def.'s Memo, p. 10; Pl.'s Memo, p. 12), and Defendant argues that Jones's testimony does not meet the standards outlined in Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and later incorporated in Federal Rule of Evidence 702. Therefore, Defendant asserts that, if Jones's testimony is excluded, summary judgment is warranted in its favor.

In response, Plaintiff contends that Jones's expert opinion is entirely sufficient to satisfy the Daubert standard and Rule 702, based in his education and experience. Pl.'s Memo, p. 5–6. Additionally, Plaintiff contends that Jones applied standard principles and methods for professionals in the field of fire investigation and engineering, as well as taking steps to ensure that his hypothesis was correct. Id. at 8, 9. This approach by Jones is sufficient, Plaintiff argues, to meet the Daubert/Rule 702 standards.

Both parties agree that the resolution Defendant's Motion for Summary Judgment hinges on our analysis of the Daubert/Rule 702 question.

A.) Daubert/Rule 702 Standards

The admissibility of expert testimony is governed by Federal Rule of Evidence 702, which prescribes:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert

> by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

FED. R. EVID. 702 (2005).

Rule 702 was amended in 2000 to incorporate the Supreme Court's holding in Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). In that case, the Court explained that, pursuant to Rule 104(a),[9] a trial judge must first determine whether an expert witness is "proposing to testify to (1) scientific evidence that (2) will assist the trier of fact to understand or determine a fact in issue." Id. at 592-93. Additionally, the Court articulated that lower courts are to act as "gatekeepers" in ensuring "that any and all scientific testimony or evidence admitted is not only relevant, but reliable." Id. at 589. That obligation requires a determination of "whether the reasoning or methodology underlying the testimony is scientifically valid," and "whether the reasoning or methodology can be properly applied to the facts in issue." Id. at 592-93. The court's inquiry must not focus "on the substance of the expert's conclusions, but on whether those conclusions were generated by a reliable methodology." Travelers Prop. & Casualty Corp. v. General Elec. Co., 150 F. Supp. 2d 360, 363 (D. Conn. 2001) (citing Daubert, 509 U.S. at 590, 595).

In its reliability inquiry, a court weighs several factors: 1) whether the theory can be (and has been) tested; 2) whether the theory has been subjected to peer review or publication; 3) the

---

[9] Rule 104(a) provides:

> Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination it is not bound by the rules of evidence except those with respect to privileges.

known or potential rate of error and the existence of standards controlling the technique's operation; and 4) the extent to which the methodology is generally accepted in the scientific community. Id. at 593-94; see also Bourelle v. Crown Equip. Corp., 220 F.3d 532, 536 (7th Cir. 2000). These factors have been broadly incorporated into Rule 702; however, the Advisory Committee Notes indicate that these factors are neither exclusive nor dispositive. Advisory Committee Notes, 2000 Amendments, FED. R. EVID. 702 (citing Daubert, 509 U.S. 579 (1993); Kumho Tire Co. v. Carmichael, 526 U.S. 137, 150 (1999)). In addition, the Seventh Circuit recently stated that Rule 702 actually supersedes Daubert. See United States v. Parra, 402 F.3d 752 (7th Cir. 2005). However, Daubert remains persuasive authority for interpreting the Rule 702 factors.

Examining each of the Rule 702 factors in turn, in light of Daubert and its progeny, we conclude that Plaintiff's expert, Scott Jones, does qualify as an expert witness and that his testimony is both relevant and reliable. We discuss each factor below.

A. *Qualification as an expert witness*[10]

The parties do not dispute that, based on his credentials, Scott Jones qualifies as an expert witness and we concur. Rule 702 contemplates the use of a witness to testify regarding "scientific, technical, or other specialized knowledge" if such a witness is "qualified as an expert." FED. R. EVID. 702 (2005). A witness may so qualify by "knowledge, skill, experience, training, or education." Id. Jones's education and years of experience are sufficient to satisfy that standard.

[10] While not an enumerated factor in Rule 702, qualification as an expert is necessary to provide expert testimony at trial. If Jones did not so qualify, the enumerated factors of Rule 702 would not need to be analyzed.

B. *Testimony based upon sufficient facts or data*

Defendant contends that Jones's testimony is not based on sufficient facts or data. Def.'s Memo, pp. 7–9. Defendant argues that Jones's conclusions are, in fact, contrary to the evidence collected during Jones's investigations. Id. at 7. Plaintiff rejoins that Jones conducted several investigations and tests, Pl.'s Memo, pp. 1–3, 8, and that those tests resulted in the collection of sufficient facts and data to support his conclusion. Id. at 6–12. We agree with Plaintiff.

Rule 702 requires that expert testimony be "based upon sufficient facts or data." FED. R. EVID. 702 (2005). The Seventh Circuit Court of Appeals has held that such facts or data must be sufficient to support the expert testimony presented. United States v. Mamah, 332 F.3d 475 (7th Cir. 2003). In fact, it is "critical . . . that there be a link between the facts or data the expert has worked with and the conclusion the expert's testimony is intended to support." Id. at 478. The court is not obligated to admit testimony solely because it flows from the mouth of an expert. Id. (citing Gen. Elec. Co. v. Joiner, 522 U.S. 136, 146 (1997) (stating: "Nothing in either Daubert or the Federal Rules of Evidence requires a district court to admit opinion evidence which is connected to existing data only by the *ipse dixit* of the expert.")).

Here, Jones's testimony and expert opinion are based on his investigation of the fire scene at issue in this case, his subsequent inspections of the Control that allegedly caused the fire, and also experiments he conducted on the Control. Jones's Report, p. 13–15. We conclude that these investigations, inspections, and experiments provided Jones with sufficient facts and data to develop a theory on the cause of the fire in this case. There is no analytical gap between those facts and data collected and Jones's hypothesis that the 1K2 relay contacts were both simultaneously closed, which began the chain of events leading to the fire at the Indianapolis Wood Products facility. Accordingly, we determine that Jones's testimony survives the first

enumerated prong of the Rule 702 test.

C. *Testimony is the Product of Reliable Principles and Methods*

The principle dispute in this case is whether Jones's testimony is the product of principles and methods considered reliable in the field of fire investigation. See Def.'s Motion, p. 8–9; Pl.'s Memo, p. 7–9; Def.'s Reply, p. 5–6. Plaintiff contends that Jones's investigation was conducted pursuant to the methods presented in the National Fire Protection Association 921 Guide for Fire and Explosion Investigations ("NFPA 921"). Pl.'s Memo, p. 8. Conversely, Defendant argues that since Jones did not independently attempt to validate his theory it is unreliable. Def.'s Motion, p. 8–9; Def.'s Reply, p. 5–6.

Rule 702 requires expert testimony to be the "product of reliable principles and methods." FED. R. EVID. 702 (2005). With regard to fire investigations, such as the one at issue here, the National Fire Protection Association 921 Guide for Fire and Explosion Investigations ("NFPA 921") is a "peer reviewed and generally accepted standard in the fire investigation community." Travelers Prop., 150 F. Supp. 2d at 366. In other words, if Jones complied with the standards set forth in NFPA 921, his resulting opinion is necessarily the product of "reliable principles and methods." FED. R. EVID. 702 (2005).

Weighing the evidence before us on this motion, we conclude that Jones's principles and methods satisfy the threshold for reliability. Specifically, Jones examined the fire scene in its entirety and eliminated all other possible causes of the fire, other than the Control. Pl.'s Memo, p. 8. The localized fire damage near the Control, as well as comparisons of the Control to an exemplar of the same model device, evidenced that the Control caused the fire. Id. From his observations, Jones developed as a hypothesis that the normally closed contacts welded together distorted the contact arm, which pushed the normally open contacts closed, creating a closed

circuit in the 1K2 relay of the Control. Id. at 8–9. Additionally, Jones tested the Control at Crane Engineering Laboratory to determine whether electric current passed through the relay. Id. at 9.

While Jones did not test his theory about how the circuit became closed prior to the fire, such a test does not seem essential here. We agree with the reasoning of the court in Tunnel v. Ford Motor Co., 330 F. Supp. 2d 707 (W.D. Va. 2004), which found that Daubert does not require testing by the expert of his theory before that opinion is admissible in court. Id. at 724–25. Rather, the methodology utilized need only be subject to testing and peer review. Id. at 725. Jones's theory of how the normally closed contacts welded together is capable of being tested by his peers, including Defendant's own expert. That the theoretical process has not been reproduced at most goes to the weight of the expert's testimony and not its admissibility. As such, it is a question of fact for a jury to decide.

Plaintiff's expert followed the standards set forth in NFPA 921, which is a widely acknowledged reliable set of principles and methods for fire investigations. Defendant cites two sections of NFPA 921 to show that the manual would support the exclusion of Jones's testimony. Def.'s Reply, p. 5. Those sections, § 14.10.4 Comparative Examination and Testing and § 21.4.6 Testing Exemplar Appliances, do not compel that conclusion, in our view. In fact, those sections lay out methods that *can* be applied by an expert following the standards of NFPA 921, but they are in no way mandatory. Section 14.10.4 discusses "[a]nother method of comparative examination," NFPA 921, § 14.10.4, Comparative Examination and Testing, but Defendant did not address the methods previously mentioned in NFPA 921. Because the other sections are not discussed by either party, we will assume that Jones complied with at least one other method of

comparative examination.[11] Similarly, § 21.4.6 of NFPA 921 provides that "[e]xemplar devices *can* be operated and tested to establish the validity of the proposed ignition scenario," NFPA 921, § 21.4.6, Testing Exemplar Appliances (emphasis added), but NFPA 921 does not require such a test.

Because Jones relied upon NFPA 921 in developing and reaching his conclusions, we conclude that his conclusions have a scientific basis and are not subjective. See Tunnel, 330 F. Supp. 2d at 725. Jones appears to have applied deductive reasoning, based on the facts and data he had before him, to reach his conclusion. Accordingly, we conclude that those principles and methods are sufficiently reliable to admit Jones's expert testimony into evidence.

D. *Principles and Methods Applied Reliably to the Facts of the Case*

Defendant contends that Jones's conclusions are contrary to the evidence Jones himself collected. Def.'s Memo, pp. 7–9. Plaintiff disagrees and again so do we.

Rule 702 requires an expert witness to apply the "principles and methods reliably to the facts of the case." FED. R. EVID. 702 (2005). Here, the focus is on the application of the methods and principles and not on Jones's ultimate conclusion regarding the origin of the fire.

As discussed in Section C, supra, Jones followed the standards set forth in NFPA 921 to develop his hypothesis about the cause of the fire at the Indianapolis Wood Products facility. Jones undertook the analytical process of applying deductive reasoning to reach the "scientific conclusion" (see Tunnel, 330 F. Supp. 2d at 726) that a malfunction in the Control allowed the fire to occur.

While his analysis may not necessarily prove his conclusion correct, Jones did apply the

[11] Such an assumption follows from our duty to "draw all reasonable inferences in favor of the non-movant. Venters v. City of Delphi, 123 F.3d 956, 962 (7th Cir. 1997).

principles and methods of NFPA 921 in a reliable manner. We leave the determination of the correctness of his views to the final fact-finder at trial. Accordingly, we have performed our prescribed function to act as a "gatekeeper" in an effort to ensure that the evidence admitted at trial is both reliable and relevant, (see Daubert, 509 U.S. 579) and conclude that Jones reliably applied established, reliable scientific principles and methods to the facts of this case. As such, Jones's testimony survives the third and final enumerated prong of Rule 702.

III. *Conclusion*

For the reasons set forth in detail above, we hold that Defendant has failed to establish Jones's expert testimony does not satisfy the Daubert/Rule 702 standards. Plaintiff has provided sufficient evidence to permit a reasonable finder of fact to conclude, based upon the evidence of Plaintiff's expert witness Scott Jones, that the Honeywell R7795A Flame Safeguard Control malfunctioned and caused the fire at the Indianapolis Wood Products facility on April 7, 2002. Accordingly, we DENY Defendant's Motion for Summary Judgment on Plaintiff's claims. IT IS SO ORDERED.

Date: _____

SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

Copy to:

Klint Lee Bruno
ELLISON NIELSEN ZEHE & ANTAS PC
kbruno@ellisonlaw.net

Jeannine Louise Lee
FLYNN GASKINS & BENNETT LLP
jlee@flynngaskins.com

Matthew W. Melton
NORRIS CHOPLIN & SCHROEDER LLP
mmelton@ncs-law.com

Richard T. Mullineaux
KIGHTLINGER & GRAY, LLP
rmullineaux@k-glaw.com

Erik William Nielsen
ELLISON NIELSEN ZEHE & ANTAS PC
enielsen@ellisonlaw.net

Andrew James Noel
FLYNN GASKINS & BENNETT LLP
anoel@flynngaskins.com

Richard L. Norris
NORRIS CHOPLIN & SCHROEDER LLP
rnorris@ncs-law.com

J. Todd Spurgeon
KIGHTLINGER & GRAY, LLP
tspurgeon@k-glaw.com